

The Honorable Thomas S. Zilly

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

IRONBURG INVENTIONS LTD.,
Plaintiff,
v.
VALVE CORPORATION,
Defendant.

No. 2:17-cv-01182-TSZ

PRETRIAL ORDER

JURISDICTION

Jurisdiction is vested in this Court under 28 U.S.C. §§1331 and 1138(a). This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. § 1 *et seq.*

CLAIMS AND DEFENSES

Plaintiff, Ironburg Inventions Ltd. (“Ironburg”), will pursue at trial the following claims against Defendant, Valve Corporation (“Valve”):

A claim for damages under 35 U.S.C. § 284 for Valve’s infringement of United States Patent No. 8,641,525 (the “’525 Patent” or the “Patent-in-Suit”) entitled, “CONTROLLER FOR VIDEO GAME CONSOLE.” Ironburg contends that Valve’s accused device, the “Steam Controller”, infringes the following claims of the ‘525 Patent: Claims 2, 4, 7, 9, 10, 11 and 18.

1 A claim for increased or enhanced damages under 35 U.S.C. § 284 based on Valve's willful
2 infringement of the claims in the '525 Patent.

3 A claim for Ironburg's costs, expenses, and reasonable attorneys' fees under 35 U.S.C.
4 § 285.

5 A claim for injunctive relief restraining Valve from further infringing the Patent-in-Suit.

6 A claim for such other relief as the Court may deem just and proper under the circumstances.

7 Valve will assert at trial the following defenses and counterclaims to Ironburg's claims:

8 Valve has not infringed any asserted claim of the '525 Patent.

9 Ironburg's claims for infringement of the '525 Patent under the doctrine of equivalents are
10 barred by the doctrines of prosecution history estoppel and/or prosecution disclaimer, ensnarement
11 and vitiation.

12 If Valve is found to have infringed the '525 Patent, any such infringement was not willful.

13 Ironburg is not entitled to any increased or enhanced damages under 35 U.S.C. § 284.

14 Ironburg is not entitled to recover any of its costs, expenses, or attorneys' fees.

15 Ironburg is not entitled to injunctive relief.

16 A claim for any other relief the Court may deem just and proper under the circumstances.

17 ADMITTED FACTS

18 The following facts are admitted by the parties:

19 1. The United States Patent and Trademark Office issued the '525 Patent to Ironburg
20 on February 4, 2014.

21 2. Ironburg is, and has been at all times since February 4, 2014, the owner and assignee
22 of record of the '525 Patent.

23 3. As part of its business, Ironburg licenses the '525 Patent to other companies,
24 including to Scuf Gaming International LLC ("Scuf"), Microsoft Corporation and others.

25 4. Valve is a video gaming company that develops and sells gaming software,
26 hardware, and related devices and accessories, and that provides an on-line gaming platform.
27
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1 (1) On behalf of Ironburg:

2 Garry E. Kitchen (infringement)
3 SGK Service Inc.
4 3494 Camino Tassajara, #403
Danville, CA 94506

5 Kenneth Serwin, Ph.D. (damages)
6 Berkeley Research Group, LLC
7 2200 Powell Street, Suite 1200
Emeryville, CA 94608

8 (2) On behalf of Valve:

9 Robert Dezmelyk (infringement)
10 LCS/Telegraphics
11 1 Bancroft Road
Newton, NH 03858

12 Ambreen Salters (damages)
13 StoneTurn Group
14 One Shell Plaza
910 Louisiana Street, Suite 4905
15 Houston, TX 77002

16 OTHER WITNESSES

17 The names and addresses of witnesses, other than experts, to be used by each party at the
18 time of trial and the general nature of the testimony of each are:

19 (a) On behalf of Ironburg:

20 Duncan Ironmonger (will testify)
21 3970 Johns Creek Ct., #325
Suwanee, GA 30024

22 Mr. Ironmonger is an inventor of the Patent-in-Suit and CEO & Co-Founder of Ironburg
23 and Scuf. Mr. Ironmonger will testify regarding the inventions disclosed in the Patent-in-Suit;
24 Ironburg's and Scuf's business; the value of and revenues derived from the Patent-in-Suit; the
25 licensing of the Patent-in-Suit; Ironburg's discussions with Valve regarding the Patent-in-Suit,
26 including licensing of the Patent-in-Suit; and damages issues.
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1 Karl Quackenbush (will testify)
2 Valve Corporation
3 10400 NE 4th Street, Suite 1400
4 Bellevue, WA 90084

5 Mr. Quackenbush will testify regarding Valve's knowledge of the Patent-in-Suit and
6 Ironburg's infringement claims, Valve's failure to design around the Patent-in-Suit, Valve's refusal
7 to obtain a license to the Patent-in-Suit, and willful infringement issues.

8 Scott Lynch (will testify)
9 Valve Corporation
10 10400 NE 4th Street, Suite 1400
11 Bellevue, WA 90084

12 Mr. Lynch will testify regarding the design, development and sales of Valve's accused
13 Steam Controller product, Valve's knowledge of the Patent-in-Suit, the revenues derived by Valve
14 from its sales of the Steam Controller product, and willful infringement issues.

15 Jane Lo (will testify)
16 Valve Corporation
17 10400 NE 4th Street, Suite 1400
18 Bellevue, WA 90084

19 Ms. Lo will testify regarding the revenues derived by Valve from its sales of the Steam
20 Controller product and bundled products and damages issues.

21 Kristian Miller (will testify)
22 Valve Corporation
23 10400 NE 4th Street, Suite 1400
24 Bellevue, WA 90084

25 Mr. Miller will testify regarding the revenues derived by Valve from its sales of the Steam
26 Controller product and bundled products.

27 Jeff Bellinghausen (will testify)
28 Amazon.com, Inc.
425 106th Ave. NE
Bellevue, WA 98004

Mr. Bellinghausen will testify regarding the design and development of Valve's Steam
Controller product and willful infringement issues.

1 Nico Cosereanu (possible witness only)
2 3970 Johns Creek Ct #325
3 Suwanee, GA 30024

4 Ms. Cosereanu will testify regarding Ironburg's and Scuf's business, financial issues
5 relating to the Ironburg and the Patent-in-Suit, the value of and revenues derived from the Patent-
6 in-Suit, the licensing of the Patent-in-Suit, and damages issues. Ms. Cosereanu was deposed by
7 Valve on February 27, 2020. The parties have agreed that any portions of Ms. Cosereanu's
8 deposition transcript to be offered by the parties at trial pursuant to LCR 32(e) shall be designated
9 consistent with LCR 16(h) and (i) by March 13, 2020.

9 Greg Coomer (possible witness only)
10 Valve Corporation
11 10400 NE 4th Street, Suite 1400
12 Bellevue, WA 90084

13 Mr. Coomer will testify regarding the design and development of Valve's Steam Controller
14 product and willfulness infringement issues.

15 Scott Dalton (possible witness only)
16 Valve Corporation
17 10400 NE 4th Street, Suite 1400
18 Bellevue, WA 90084

19 Mr. Dalton will testify regarding the design and development of Valve's Steam Controller
20 product and willfulness infringement issues.

21 Eric Hope (possible witness only)
22 Valve Corporation
23 10400 NE 4th Street, Suite 1400
24 Bellevue, WA 90084

25 Mr. Hope will testify regarding the design and development of Valve's Steam Controller
26 product and the willful infringement issues.

27 Jeff Keyzer (possible witness only)
28 17304 NE 34th Street
Redmond, WA 98052

1 Mr. Keyzer will testify regarding the design and development of Valve's Steam Controller
2 product and the willful infringement issues.

3
4 Jason Beach (possible witness only)
5 6509A Ellis Ave. A
6 Seattle, WA 98108

7 Mr. Beach will testify regarding the design and development of Valve's Steam Controller
8 product and the willful infringement issues.

9 Greg Matelich (possible witness only)
10 10515 324th P1 SE
11 Issaquah, WA 98027

12 Mr. Matelich will testify regarding the design and development of Valve's Steam Controller
13 product and the willful infringement issues.

14 Ironburg reserves the right to call any witnesses disclosed by Valve, any witnesses whose
15 testimony cannot reasonably be anticipated before trial, and any rebuttal witnesses, regardless of
16 whether listed above.

17 (b) On behalf of Valve:

18 Scott Lynch (will testify)
19 Valve Corporation
20 10400 NE 4th Street, Suite 1400
21 Bellevue, WA 90084

22 Mr. Lynch is Valve's Chief Operating Officer. Mr. Lynch will testify regarding Valve and
23 its business, Valve's development and marketing of the Steam Controller, the video gaming market
24 generally, and Valve's costs and sales of the Steam Controller.

25 Jeff Bellinghausen (will testify)
26 Amazon.com, Inc.
27 425 106th Ave. NE
28 Bellevue, WA 98004

1 Mr. Bellinghausen is a former Valve engineer who worked on developing the Steam
2 Controller. Mr. Bellinghausen will testify regarding the development and design of the Steam
3 Controller, the video gaming market generally, Valve patents relating to gaming controllers.

4 Karl Quackenbush (will testify)
5 Valve Corporation
6 10400 NE 4th Street, Suite 1400
7 Bellevue, WA 90084

8 Mr. Quackenbush is Valve's General Counsel. Mr. Quackenbush will testify regarding
9 Valve's pre-suit knowledge of and communications with Ironburg regarding the '525 Patent.

10 Eric Hope (will testify)
11 Valve Corporation
12 10400 NE 4th Street, Suite 1400
13 Bellevue, WA 90084

14 Mr. Hope is a Valve employee who was involved with developing and marketing the Steam
15 Controller. Mr. Hope will testify regarding Valve and its business, Valve's development and
16 marketing of the Steam Controller, and the video gaming market generally.

17 Kristian Miller (possible witness only)
18 Valve Corporation
19 10400 NE 4th Street, Suite 1400
20 Bellevue, WA 90084

21 Mr. Miller is a Valve employee with a background in economics. Mr. Miller will testify
22 regarding Valve's marketing and sales of the Steam Controller.

23 Jane Lo (possible witness only)
24 Valve Corporation
25 10400 NE 4th Street, Suite 1400
26 Bellevue, WA 90084

27 Ms. Lo is Valve employee in Valve's accounting department. Ms. Lo will testify regarding
28 the amount of Valve's sales of the Steam Controller.

Simon Burgess (possible witness only)
Howe Lane
Rothley, Leicester
United Kingdom

1 Mr. Burgess is the first-named inventor of the '525 Patent and co-founder of Ironmonger
2 and Scuf. Mr. Burgess will testify by video deposition regarding the conception and development
3 of the inventions claimed in the '525 Patent, Ironburg's and Scuf's businesses, and the
4 circumstances surrounding his departure from Ironburg and Scuf.
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6 Nico Cosereanu (possible witness only)
7 3970 Johns Creek Ct #325
8 Suwanee, GA 30024

9 Ms. Cosereanu will testify regarding Ironburg's and Scuf's business, financial issues
10 relating to Ironburg and the Patent-in-Suit, the value of and revenues derived from the Patent-in-
11 Suit, the licensing of the Patent-in-Suit, and damages issues. Ms. Cosereanu was deposed by Valve
12 on February 27, 2020. The parties have agreed that any portions of Ms. Cosereanu's deposition
13 transcript to be offered by the parties at trial pursuant to LCR 32(e) shall be designated consistent
14 with LCR 16(h) and (i) by March 13, 2020.
15

16 Valve reserves the right to call any witnesses disclosed by Ironburg, any witnesses whose
17 testimony cannot reasonably be anticipated before trial, and any rebuttal witnesses, regardless of
18 whether listed above.

19 EXHIBITS

20 Counsel shall meet and confer and file, by June 1, 2020, a revised exhibit list.
21

22 ACTION BY THE COURT

23 (a) This case will be scheduled for trial before a jury as soon as possible.

24 (b) Trial briefs, docket nos. 346 and 349, have been submitted to the Court.

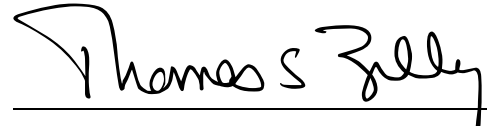
25 (c) Proposed voir dire questions were submitted by the parties on February 28, 2020.
26 Proposed jury instructions were submitted by the parties on March 5, 2020.

27 (d) A telephonic pretrial conference was held on May 1, 2020, at 10:00 a.m.
28

1 This order has been approved by the parties as evidenced by the signatures of their
2 counsel and the attorneys' consent during the pretrial conference. This order shall control the
3 subsequent course of the action unless modified by a subsequent order.

4 This order shall not be amended except by order of the court pursuant to agreement of the
5 parties or to prevent manifest injustice.

6 DATED this 1st day of May, 2020.

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9 Thomas S. Zilly
10 United States District Judge

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14 FORM APPROVED:

15
16 DATED: February 28, 2020

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Attorneys for Ironburg Inventions Ltd.

1 Dated: February 28, 2020

Respectfully submitted,

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